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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,713	10/07/2005	Risa Nishihara	8076-1001	6806

466 7590 01/14/2008  
YOUNG & THOMPSON  
745 SOUTH 23RD STREET  
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ARLINGTON, VA 22202

EXAMINER
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STEPHENS, JACQUELINE F

ART UNIT	PAPER NUMBER
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3761

MAIL DATE	DELIVERY MODE
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01/14/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/552,713

Applicant(s)

NISHIHARA, RISA

Examiner

Jacqueline F. Stephens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11/1/07.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 45-90 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 45-90 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 11/1/07 have been fully considered but they are not persuasive. Applicant argues the combination of Nishihara JP 2002275001, Nishihara JP 2003111830, and Kitajima JP 8133901 does not disclose a sealing device or cotton plugs. sealing member for a mouth and a second cotton material for a ear or nose plug as presently claimed. However, as previously stated by the Examiner, Kitajima clearly shows a cotton sealing member for a mouth, another cotton sealing member for the ear, and another cotton sealing member for nose plugs in Figure 1 and 2. In response to applicant's argument that the cotton plug B for the oral cavity 9 cannot either prevent a leakage of saliva or adjust a shape of both cheeks, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

2.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 45-90, as best understood by the examiner, are rejected under 35 U.S.C.

103(a) as being unpatentable over Nishihara JP 2002275001 in view of Nishihara

JP2003111830 and further in view of Kitajima JP 8133901.

Nishihara discloses a device and method for preventing humoral ooze comprising a syringe 1 having a piston 1a, inserting tube 4,7, covering member 5, and a jelly substance 8. Nishihara does not disclose the syringe has an identification mark. However, matters relating to ornamentation only, which have not mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art, *In re Seid*, 161 F.2d 229, 73 USPQ 431 (CCPA 1947). See MPEP 2144.04 I.

Nishihara '001 does not disclose a body fluid sealing member and cotton substance as claimed. Nishihara JP 2003111830 discloses a sealing device for preventing the leakage of rectal waste from the anus due to the relaxation of the sphincter caused by death. One having ordinary skill in the art would have been motivated by the teaching of Nishihara '830 to provide the invention of Nishihara '001 with a sealing device for preventing leakage of rectal waste. The sealing device of Nishihara '830 comprises a molding 2 of highly water-absorbing fibers, a water-soluble sheet 3 covering the outer periphery of the molding 2, and a lubricant 4 covering the water-soluble sheet 3.

Nishihara '001/'830 does not disclose a cotton substance. Kitajima JP 8133901 teaches a method of preventing leakage involving inserting a jelly into the inner part of

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the nasal cavity and ears and plugging the outer part of the cavities with medical cotton. It would have been obvious to one having ordinary skill in the art to provide the invention of Nishihara '001/'830 with a cotton substance. Doing so would provide a means for plugging the cavity to assist with preventing leakage of bleeding and offensive odor to the outside.

Nishihara '001/'830/Kitajima shows a cotton sealing member for a mouth, ear, and nose plugs in Figures 1 and 2. The limitations directed to the cotton plug preventing leakage of saliva or adjusting a shape of both cheeks is directed to an intended use of the article. Regarding the limitations of adapted to and traversing the gluteal fold, these limitations are directed to an intended use of the article. Intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). If the prior art structure is capable of performing the intended use, then it meets the claim limitations.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F. Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jacqueline F Stephens  
Primary Examiner  
Art Unit 3761

January 7, 2008